

## New Reporting Requirement Under FinCEN's 'Residential Real Estate Rule' in Effect as of March 1, 2026

March 12, 2026

On March 1, 2026, the "Residential Real Estate Rule" issued by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) went into effect. The rule requires the filing of a report with FinCEN in connection with specified non-financed transfers of residential real property to legal entities and trusts. With the goal of combating money laundering and increasing transparency in a segment of the real estate market that has traditionally not been subject to broad reporting requirements, parties to a transaction within the scope of the Residential Real Estate Rule will be required to disclose a number of typically nonpublic transaction details, including price and beneficial ownership of the transferee.

As the name implies, the Residential Real Estate Rule applies primarily in the context of residential real estate transactions. However, developers, real estate investors and private lenders should be aware that certain transactions commonly considered to be commercial transactions — including lot development and land banking — may fall within the scope of the rule. FinCEN has also suggested the possibility of extending similar reporting requirements to transactions involving commercial real estate at a later date.

### **Background and Purpose**

For many years, FinCEN has exempted persons involved in real estate closings and settlements from comprehensive regulation under the Bank Secrecy Act (BSA). However, FinCEN's experience with its existing reporting programs revealed significant rates of illicit activity in non-financed transfers of residential real estate. In fact, among the transactions previously reportable to FinCEN under geographic targeting orders, more than 40 percent of non-financed real estate transfers were conducted by individuals or entities that were the subject of Suspicious Activity Reports (SARs) filed by financial institutions. The Residential Real Estate Rule replaces the geographically-based framework with a permanent, nationwide reporting requirement.

## Reportable Transfers and the "Non-Financed" Definition

The Residential Real Estate Rule requires the reporting person to file a "Real Estate Report" with FinCEN when all of the following conditions are met:

1. title to residential real property is being transferred;
2. the transfer is non-financed;
3. the property is transferred to an entity (such as an LLC, corporation or partnership) or a trust;  
and
4. no exception applies.

Importantly, the rule contains no dollar threshold — low-value transfers and even transfers for no consideration (such as gifts) may be reportable. Furthermore, there is no exception for transfers between affiliates. However, the rule does not expressly apply to transfers of equity interests in entities owning residential real property.

**Definition of Residential Real Property:** "Residential real property" is defined as real property containing a structure designed principally for occupancy by one to four families. Importantly, this includes a unit designed principally for such occupancy within a larger structure (including condominiums and cooperatives), shares in a cooperative housing corporation or multiple lots within a housing subdivision. Critically for developers and investors in the residential real estate market, the rule also applies to raw land on which the transferee *intends to build* one or more structures designed principally for occupancy by one to four families. Accordingly, the scope of the Residential Real Estate Rule extends well beyond traditional residential closings and into the development space.

However, there is a significant caveat that is likely to be important to developers of residential subdivisions. FinCEN's responses to Frequently Asked Questions suggest that if the developer only intends to subdivide and sell developed lots to third-party builders (who would then construct homes after acquiring title), the developer's initial acquisition may not constitute a reportable transfer because the developer does not "intend to build" a residential structure during its period of ownership. Anecdotally, we have already seen some title insurance companies agree with this interpretation.

**Definition of Non-Financed Transfer.** A transfer of residential real property is considered "non-financed" if either (1) no financing was used at all, or (2) if the financing is extended by any party other than a financial institution subject to FinCEN's anti-money laundering (AML) program requirements and SAR obligations. Debt funds and other providers of private credit should therefore be aware that their participation in a transaction will not exempt the transaction from reporting — to the contrary, financing from a lender without AML obligations triggers the rule's application, and the underlying transfer must be reported if the other criteria for a reportable transfer are met. Reporting

persons may rely on representations made by the lender as to whether it has AML program requirements and SAR obligations, provided the reporting person does not have reason to question the lender's information.

**Key Exceptions:** Several categories of transfers and transferees are excepted from the Residential Real Estate Rule. Excluded transfers include those resulting from death (whether by will, trust, operation of law or beneficiary designation), transfers incident to divorce or dissolution of a marriage or civil union, transfers to a bankruptcy estate, transfers supervised by a court in the United States, certain no-consideration estate planning transfers and transfers to qualified intermediaries for purposes of a Section 1031 like-kind exchange.

Several types of transferee entities are also excluded, including securities reporting issuers, governmental authorities, banks, credit unions, registered investment companies and legal entities controlled or wholly owned by another excepted entity. Notably, while *registered* pooled investment vehicles (PIVs), such as mutual funds registered under the Investment Company Act of 1940, are excepted, *unregistered* PIVs, such as most hedge funds, private equity funds and real estate debt funds, are not excepted. When participating in a reportable transaction, unregistered PIVs must provide the reporting person with the required information regarding their beneficial owners.

## Reporting Persons

The rule establishes a seven-tier "reporting cascade" to determine which real estate professional is responsible for filing the report for a given transaction. From a practical perspective, the reporting person in most transactions will be the title insurance company conducting the closing. However, the parties may enter into a written designation agreement for a specific transaction to designate another person in the cascade as the reporting person.

## Information Required to be Reported

While the reporting person bears the responsibility to file the Real Estate Report, transferees (and their beneficial owners) should expect to provide detailed information to the reporting person regarding the property (including address, legal description and date of closing), the transferee and its beneficial owners (including name, date of birth, residential address, citizenship, and TIN or passport number), any signing individuals who executed documents on behalf of the transferee, the transferor (name, address and TIN, though beneficial ownership of transferors is not required), and payment information (including total consideration, payment method, and financial institution name and account number). The rule also requires disclosing whether the transfer involved credit extended by a person without AML obligations, such as a debt fund or private lender.

Importantly, the information contained in the report will be maintained by FinCEN in a secure, nonpublic database subject to strict limits on authorized access and use, and is exempt from disclosure under the Freedom of Information Act (FOIA).

### **Filing Deadline, Recordkeeping and Penalties**

Real Estate Reports must be filed electronically with FinCEN by the later of (1) the last day of the month following the month in which closing occurred, or (2) 30 calendar days after the date of closing. Accordingly, reporting persons will generally have approximately 30 to 60 days to file after closing. Reporting persons must retain for five years a copy of any beneficial ownership certification form received and any designation agreement to which they are a party. Reporting persons are not required to retain a copy of the Real Estate Report itself, however.

While the transaction parties themselves are not directly subject to penalties for noncompliance, reporting persons are subject to substantial civil penalties, fines and even potential criminal penalties in the case of willful violations. Reporting persons are therefore heavily incentivized to comply, and if transaction parties fail to provide the requisite information, the settlement agent may refuse to conduct the closing.

### **Conclusion**

We encourage clients transacting in the residential real estate space to begin preparing for compliance by reviewing internal processes and establishing procedures for providing the required information to reporting persons. Clients should also consider the impact of this rule on transaction timelines and documentation requirements.

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